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*See also letter
attached hereto.
re: Police Commission*

1951

Nov. 13

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CONCORD, N.H.

Donald R. Bryant, Esq.,
City Solicitor
Dover, New Hampshire

Dear Mr. Bryant:

You have raised several issues growing out of the recent election in the City of Dover in which the people of Dover voted out the City Manager Charter and adopted the Charter provisions contained in laws of 1949, chapter 430.

The general problem arises by virtue of the referendum section of chapter 430. This section provides for a special election to be held Tuesday October 4, 1949 to determine whether or not the voters of Dover desire the City Manager Plan to continue and further provides that the same issue may be raised at any regular municipal election during the ten years next preceding said special election. The section further provides that in the event that the City Manager Charter is voted out at a regular municipal election that a special election of city officials shall be held the first Tuesday of December. The problem has arisen under the filing provisions for elective offices under the new Charter inasmuch as the Charter provides that candidates for the various elective offices shall file their intentions of candidacy thirty days prior to the election. It is obvious that in no calendar year would there be thirty days between the November election day and the first Tuesday of December. It is our feeling that this impasse was created by oversight of the Legislature and was not deliberate. The general intent of the Legislature seemed to be to give the voters of Dover an opportunity to determine the type of Charter they desired and provided as nearly as possible a system unique to Dover for determining this matter.

Since strict compliance with the Charter provisions is an impossibility and would be an impossibility in any given year, it is our feeling that substantial compliance would be sufficient in this instance. Although certain provisions of election laws are held to be mandatory, others are often considered directory. In instances similar to this, substantial compliance has been held sufficient. See Turner v. Lewie,

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Tex. civ. App. 201 SW 2d 86, and State v. Wimberly, 184 Tenn. 132, 196 SW 2d 56. See also McQuillin, Municipal Corporations 3d Ed., section 12.10. It is also stated in McQuillin at section 40.14 that "... in the absence of fraud or attempt to mislead the voters, or express declaration in the law to the contrary, mere irregularities which do not prevent a full and free expression of opinion of the will of the electors, and do not affect or change the result, will not invalidate the election. This rule has been applied to irregularities and notices in calling the election and registration . . . in the time and place of election . . . The reason is that the courts are anxious rather to sustain than to defeat the popular will".

There is no direct authority in New Hampshire as you know. Consequently we must look to other jurisdictions to determine the question. It is our feeling that the City Clerk of Dover, together with yourself should determine the final closing date for candidates and that the December election should be held as provided in the new Charter. I feel that the other problems raised in your letter may be solved in a like manner.

Very truly yours,

Henry Dowst, Jr.,
Assistant Attorney General

HD:RM